



Federal Communications Commission  
Washington, D.C. 20554  
August 17, 2007

*In Reply Refer to:*  
1800B3-LAS/JP

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Palo Alto, CA 94306

CAAM Partnership  
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Everett, WA 98206-5267

Amy Meredith  
110 Green Meadows  
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**Re: AM Broadcast Auction 84  
MX Group 84-40**

Freeland, Washington  
Facility ID No. 160396  
File No. BNP-20040128APD

Snohomish, Washington  
Facility ID No. 160891  
File No. BNP-20040129AQS

Honokaa, Hawaii  
Facility ID No. 161076  
File No. BNP-20040129ANQ

**Applications for New AM Station  
Construction Permits**

Dear Applicants:

We have before us three mutually exclusive AM applications.<sup>1</sup> JNE Investments, Inc. ("JNE") proposes a new AM station at Freeland, Washington; CAAM Partnership ("CAAM") proposes a new AM station at Snohomish, Washington; and Amy Meredith ("Meredith") proposes a new AM station at Honokaa, Hawaii. As discussed below, we find a dispositive preference for CAAM under Section 307(b)

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<sup>1</sup> In addition, ten other mutually exclusive applications in MX Group 84-40 filed by Cleo Broadcasting, LLC (File No. BNP-20040126AKJ); Fred R. and Evelyn K. Morton (File No. BNP-20040130ADT); Langer Broadcasting Group, LLC (File No. BNP-20040130BDH); James Rondeau (File No. BNP-20040130BRE); and CAAM Partnership (File Nos. BNP-20040129AQW, BNP-20040129ARI, BNP-20040129ARO, BNP-20040129ARX, BNP-20040129ASA, BNP-20040129ASG) were dismissed on March 21, 2006. *See AM Auction No. 84 Mutually Exclusive Applications Dismissed for Either Failing to File or Untimely Filing of Section 307(b) Showing, Public Notice*, 21 FCC Rcd 2912 (MB 2006).

of the Communications Act of 1934, as amended<sup>2</sup> (the “Act”), and therefore direct CAAM to file its long-form application within 60 days of the date of this letter for a construction permit in that community.

**Background.** In situations such as the one before us, the grant of an application would normally be resolved by a competitive bidding process.<sup>3</sup> However, in the *Broadcast First Report and Order*, the Commission determined that the competitive bidding procedures should be consistent with its statutory mandate under Section 307(b) of the Act to provide a “fair, efficient, and equitable” distribution of radio services across the nation. To this end, the Commission directed the staff to undertake a traditional Section 307(b) analysis prior to conducting an auction for mutually exclusive AM applications.<sup>4</sup> The Commission also noted that the FM allotment priorities fulfill its obligation under Section 307(b), and would apply in making a Section 307(b) determination regarding mutually exclusive AM applications before auction.<sup>5</sup>

**Discussion.** Both the JNE and CAAM applications propose a first local transmission service to their respective communities and claim priority (3) under the applicable allotment priorities. There is currently one radio station licensed to Honokaa, Hawaii, Meredith’s proposed community of license, therefore, its proposal would be considered under priority (4), other public interest matters. Under well-settled policy, the establishment of a first local service at either Snohomish or Freeland, Washington, under priority (3) is preferred to a priority (4) proposal.

Where, as in this instance, JNE and CAAM’s proposed new AM stations’ 5 mV/m contours could cover a significant portion of an Urbanized Area, we do not automatically award a first local service preference. Rather, we have used the criteria set forth in *Faye and Richard Tuck* (“*Tuck*”)<sup>6</sup> as a guideline in determining whether the proposed community has an identity distinct from the Urbanized Area, and is therefore entitled to consideration for a first local transmission service. These criteria are: (1) the degree to which the proposed station will provide coverage to the Urbanized Area; (2) the size and proximity of the proposed community of license relative to the central city of the Urbanized Area; and (3) the interdependence of the proposed community of license and the Urbanized Area, utilizing the eight *Tuck*

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<sup>2</sup> 47 U.S.C. § 307(b).

<sup>3</sup> See *Implementation of Section 309(j) of the Communications Act-Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses* (“*Broadcast First Report and Order*”), First Report and Order, 13 FCC Rcd 15920 (1998), *recon denied*, Memorandum Opinion and Order, 14 FCC Rcd 8724 (1999), *modified*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999).

<sup>4</sup> *Broadcast First Report and Order* at 15964-65.

<sup>5</sup> See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

<sup>6</sup> *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 (1988).

factors.<sup>7</sup> By letter dated June 28, 2006, the staff requested that JNE and CAAM supplement their Section 307(b) showings with information addressing the *Tuck* criteria in order to determine whether their proposals warrant a first local service preference.

*Freeland proposal:* On July 18, 2006, JNE responded, contending that a *Tuck* analysis is not necessary because the proposed station at Freeland will not place a daytime 5 mV/m contour over any portion of the Seattle, Washington, Urbanized Area. However, a *Tuck* showing is required where, as in this instance, a potential transmitter site could serve a significant portion of the Urbanized Area.<sup>8</sup> The record reflects that the population of Freeland (1,313 persons) is 0.2 percent of the population of Seattle (563,374 persons), and Freeland is approximately forty-three miles away from the center of the Seattle Urbanized Area. However, these facts do not necessarily preclude a finding that Freeland warrants a first local service preference.<sup>9</sup> While these two factors are pertinent, they are less significant than evidence substantiating the independence of Freeland from Seattle.

JNE contends that, based on the *Tuck* factors, Freeland is independent from Seattle. In support, JNE submits that most of Freeland's residents work in Freeland (factor 1). JNE states that Freeland is served by a local newspaper, the *South Whidbey Record*, which is separate and distinct from the newspaper serving Seattle (factor 2). JNE submits that the geographic separation of Freeland from the mainland and Seattle, statements from the Island County Economic Development Council, and efforts to incorporate Freeland indicate that Freeland's community leaders and residents have perceive their community as being separate from the larger area of Seattle (factor 3). Freeland is unincorporated and thus does not have its own local government. However, Freeland is governed by the Island County government, not the government of Seattle (factor 4). Freeland has its own zip code and post office and is covered in a separate telephone directory from Seattle (factor 5). JNE states that numerous commercial establishments exist within Freeland, including a department store, a grocery store, banks, auto mechanics and numerous retail establishments. In addition, Freeland is home to a number of medical providers serving the residents (factor 6). JNE states that Freeland and Seattle are not part of the same advertising market due to their geographic separation (factor 7). Freeland residents receive all of their municipal services from Island County and Freeland has its own library. Freeland receives no services from Seattle (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that

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<sup>7</sup> The eight factors set forth in *Tuck* are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services.

<sup>8</sup> See, e.g., *Chillicothe and Ashville, Ohio*, Request for Supplemental Information, 18 FCC Rcd 11230 (MB 2003) (*Tuck* showing required based on potential transmitter relocation site that would serve more than 50 percent of an Urbanized Area).

<sup>9</sup> See *Bay St. Louis and Poplarville, Mississippi*, Report and Order, 10 FCC Rcd 13144 (MMB 1995) (first local service preference awarded when population difference was only 4.48 percent); *Ada, Newcastle and Watonga, Oklahoma*, Report and Order, 11 FCC Rcd 16896 (MMB 1996) (first local service preference awarded when contour coverage of 85-95 percent of Urbanized Area and population difference of less than 1 percent); *Oraibi, Arizona*, Report and Order, 14 FCC Rcd 13547 (MMB 1999) (first local service preference awarded when contour coverage of 90 percent of Urbanized Area).

Freeland is independent of Seattle. As such, JNE's application meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Freeland, Washington.<sup>10</sup>

*Snohomish proposal:* On July 7, 2006, CAAM responded, indicating that it would rely on its October 26, 2005, Section 307(b) showing to provide the requested information.<sup>11</sup> The record reflects that the proposed station at Snohomish will place a daytime 5 mV/m contour over seventy seven percent of the Marysville, Washington, Urbanized Area. The record reflects that the population of Snohomish (8,494 persons) is 7.4 percent of the population of Marysville (113,638 persons), and Snohomish is approximately thirteen miles away from the center of the Marysville Urbanized Area. However, these facts do not necessarily preclude a finding that Snohomish warrants a first local service preference.<sup>12</sup> While these two factors are pertinent, they are less significant than evidence substantiating the independence of Snohomish from Marysville.

CAAM contends that, based on the *Tuck* factors, Snohomish is independent from Marysville. In support, CAAM states that Snohomish is served by a weekly newspaper, the *Snohomish County Tribune*, which is separate and distinct from the newspaper serving Marysville (factor 2). Snohomish is incorporated and has its own local government, consisting of a city manager and city council (factor 4). Snohomish has its own zip code and telephone directory (factor 5). CAAM states that numerous commercial establishments exist within Snohomish, including insurance brokers, construction companies, banks, and numerous retail establishments. Snohomish also has numerous civic organizations and medical facilities serving the residents (factor 6). Snohomish provides police and fire protection to its residents, along with streets, sewer and water service. Snohomish also has its own library (factor 8). We find that the preponderance of the evidence submitted supports the conclusion that Snohomish is independent of Marysville.<sup>13</sup> As such, CAAM's application meets the criteria for a preference under priority (3) of the applicable allotment priorities as a first local transmission service to Snohomish, Washington.<sup>14</sup>

After careful consideration of all three applications, we have determined that the CAAM proposal is entitled to a dispositive Section 307(b) preference. Both CAAM and JNE propose a first local service and claim priority (3) under the applicable allotment priorities. Where, as in this instance, listeners in

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<sup>10</sup> Furthermore, we find that Freeland, Washington, constitutes a community suitable for licensing purposes. See *Arnold and Columbia, California*, Memorandum Opinion and Order, 7 FCC Rcd 6302, 6303 (MMB 1992).

<sup>11</sup> Numerous extra-procedural pleadings were filed in this proceeding, in which JNE contends that CAAM's application should be dismissed for violating the inconsistent or conflicting application rule, 47 C.F.R. § 73.3518, and the anti-collusion provisions found in 47 C.F.R. § 1.2105. Because these pleadings are not authorized, and are beyond the scope of a Section 307(b) analysis, they will not be considered.

<sup>12</sup> See note 9 *supra*.

<sup>13</sup> While CAAM did not provide information pertaining to factors 1, 3, or 7, we have considered a community independent when evidence supporting a majority of these factors demonstrates that the proposed community of license is distinct from the Urbanized Area. Thus, not every factor must weigh in favor of independence. See, e.g., *Parker and St. Joe, Florida*, Report and Order, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, Report and Order, 12 FCC Rcd 3570 (MMB 1997).

<sup>14</sup> Furthermore, we find that Snohomish, Washington, constitutes a community suitable for licensing purposes. See note 10 *supra*.

each of the communities receive five or more aural services,<sup>15</sup> the Commission has consistently based its decision on a straight population comparison and preferred the community with the larger population.<sup>16</sup> We therefore, find it in the public interest to give preference to a first local service to the larger community of Snohomish (with a 2000 U.S. Census population of 8,494 persons) over a first local service to the smaller community of Freeland (with a 2000 U.S. Census population of 1,313), or a second local service to the community of Honokaa, Hawaii. For these reasons, CAAM will continue in the application process by filing a complete FCC Form 301 application.<sup>17</sup>

**Conclusion / Action.** Accordingly, IT IS ORDERED that CAAM, within 60 days of the date of this letter, is to file a complete FCC Form 301 in connection with its application for a new AM broadcast station at Snohomish, Washington (File No. BNP- 20040129AQS), pursuant to the procedures set forth in the Commission's Rules.<sup>18</sup> With its application, CAAM must simultaneously submit the required filing fee for a new commercial AM radio station and an FCC Form 159, Remittance Advice.

The facilities proposed in the FCC Form 301 must comply with all applicable AM rules. CAAM must demonstrate that the proposed facility protects existing stations and earlier filed applications, and that the daytime and nighttime facilities comply with principal city coverage requirements.<sup>19</sup> Any differences between the tech box proposal filed during the AM Auction No. 84 filing window and the complete FCC Form 301 must be minor changes, as defined by the applicable AM service rules,<sup>20</sup> and must not create new application conflicts.

The complete FCC Form 301 application must be filed electronically through the Media Bureau's Consolidated Database System (CDBS) online electronic forms system. For information regarding electronic application filing, refer to the April 28, 2000, Public Notice, *Mass Media Bureau Implements Consolidated Database System (CDBS) Electronic Filing of FCC Forms 301, 302, 314, 315, 316, and 347*. When filing the complete FCC Form 301, an applicant must select "Long Form Application for AM Auction No. 84" on the Pre-form for Form 301 (Question 2 – Application Purpose). In addition, the CDBS file number previously issued to the tech box submission filed in the AM Auction No. 84 filing

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<sup>15</sup> Both Snohomish and Freeland are well-served by at least five full-time aural services. *See Family Broadcasting Group*, Decision, 93 FCC2d 771 (Rev. Bd.), *rev. denied*, Order, FCC 83-559 (1983) (Commission considers areas that receive five or more services to be abundantly served).

<sup>16</sup> *See, e.g., Cameron and Hackberry, Louisiana*, Report and Order, 20 FCC Rcd 16267 (MB 2005) (decision based on population difference of 266 people); *Rose Hill, North Carolina*, Memorandum Opinion and Order, 15 FCC Rcd 10739 (MMB 2000) (decision based on population difference of 370 people); *Blanchard, Louisiana and Stephens, Arkansas*, Memorandum Opinion and Order, 10 FCC Rcd 9828 (1995) (decision based on population difference of 38 people).

<sup>17</sup> After the FCC Form 301 is filed, the staff will conduct a complete legal and technical analysis. We will issue Public Notices entitled "Broadcast Applications," announcing AM auction applications determined to be acceptable for filing. These notices will be generated by the Consolidated Database System ("CDBS"). Petitions to deny an FCC Form 301 application, must be filed within 10 days following release of the Broadcast Applications Public Notice announcing acceptance of the application at issue. *Broadcast First Report and Order*, 13 FCC Rcd at 15985. The staff will dismiss the applications filed by JNE (File No. BNP-20040128APD) and Meredith (File No. BNP-20040129ANQ) upon action taken on the application filed by CAAM.

<sup>18</sup> *See* 47 C.F.R. §§ 0.401(b), 1.1104, 1.1109, 73.5005(d), and 73.3512.

<sup>19</sup> *See id.* §§ 73.24, 73.37, and 73.182.

<sup>20</sup> *Id.* § 73.3571.

window must be entered on the Pre-form in the field "Eng. Proposal File Number." Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing website at <http://www.fcc.gov/mb/elecfile.html>. For assistance with electronic filing, call the Audio Division Help Desk at (202) 418-2662.

The staff will return applications not submitted in accordance with the procedures described above. Failure to timely file the complete FCC Form 301 application will result in dismissal of the tech box proposal filed during the AM Auction No. 84 filing window for failure to prosecute, pursuant to Section 73.3568 of the Commission's Rules.<sup>21</sup>

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Christopher D. Imlay, Esq.  
Richard A. Helmick, Esq.  
Lee J. Peltzman, Esq.

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<sup>21</sup> *Id.* § 73.3568.